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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/476,490	12/30/1999	LINDSAY S. MACHAN	110129.411	7911

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SEED INTELLECTUAL PROPERTY LAW GROUP PLLC
701 FIFTH AVENUE, SUITE 5400
SEATTLE, WA 98104-7092

EXAMINER

HO, TAN-UYEN

ART UNIT	PAPER NUMBER
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3731

MAIL DATE	DELIVERY MODE
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09/05/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/476,490

Applicant(s)

MACHAN ET AL.

Examiner

(Jackie) Tan-Uyen T. Ho

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 May 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 3,4 and 11-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 3,4,11-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 5/25/07 have been fully considered but they are not persuasive. Applicant argues that Wang reference fails to disclose or teach:

- A graft;
- The sleeve (46 of Wang reference) is not a graft;
- The stent with the sleeve (46 of Wang reference) does not convert a stent into a stent graft;

Applicant also argues that:

- A stent graft comprises a graft (...a tube that can function as an alternate to a body passageway) that has a stent to hold the graft open and so permit attachment of the graft to a body passageway. Hence, the graft material of a stent graft is selected to prevent the flow of fluids from the inside to the outside of the graft.
- The stent disclosed by Wang could not be used to bypass a damaged body passageway ...

Examiner's position is that with a broadest reasonable interpretation, the sleeve (46) of Wang reference encompasses a graft function and it is considered to be a graft. The sleeve (46) is a tube that has a stent (44) to hold the sleeve open and permit attachment of the sleeve to a body passageway. The sleeve is (46) adapted to prevent the flow of fluids from the inside to the outside of the sleeve. The claimed limitations do not exclude a sleeve (46) placed on the stent (44) from being a graft and the claimed

limitations do not limit the claim the stent graft as claimed to be used for bypassing a damaged body passageway.

Applicant further argues (page 5 of the Remarks) that Wang reference teach away from the claimed invention such as in certain embodiment of Wang reference the stent graft may release drugs to inhibit tissue responses. The examiner's position is that Wang also teaches at least one embodiment including a vessel wall irritant, as claimed that is adapted to induces or accelerates an in vivo fibrotic reaction at a tissue in the vicinity of the stent graft of Wang.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 3, 12, 13, 14, 15 are rejected under 35 U.S.C. 102(e) as being anticipated by Wang (6,379,379). Wang disclose a stent graft comprising a stent (44) with grafts (46), wherein the grafts include a vessel wall irritant (col. 7, lines 5-21 and col. Lines 20-57) and the stent-graft is self-expandable or balloon expandable tubular member (col. 2, line 66 to col. 3, line 4).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 4 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wang '379. Wang discloses all the limitations of the claims except fails to disclose a stent-graft being a bifurcated stent-graft and the wall irritant being selected from the groups as listed in claim 4. Modify or make a stent-graft having a bifurcated configuration is well known in the art for treating bifurcated in vessel system and the bioadhesive material as claimed in claim 4 are also well known in the art. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Wang's stent having bifurcated configuration in order to treat a bifurcated area in a vessel system.

Regarding claim 4, it would have been obvious matter of design choice to use the bioadhesive material as claimed for Wang's stent graft since applicant has not disclosed using those specific materials for solving any stated problem or for any particular purpose, it appears that the bioadhesive materials as claimed would perform equally well as bioadhesive materials disclosed by Wang.

A limitations of the claimed combination which presented no novel or unexpected result over a similar feature used in the prior art references, and solved no stated problem, was held to be an obvious matter of design choice within the skill of the art. In re Kuhle, 526 F2d 523; 188 USPQ 7 (CCPA 1975). In re Gazda, 42 CCPA 770; 219 F2d 449;

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104 USPQ 400 (1955). In re Launder, 42 CCPA 886; 222 F2d 371; 10 USPQ 446 (1955).

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to (Jackie) Tan-Uyen T. Ho whose telephone number is 571-272-4696. The examiner can normally be reached on MULTIFLEX Mon. to Sat..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, ANHTUAN NGUYEN can be reached on 571-272-4963. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



(Jackie) Tan-Uyen T. Ho
Primary Examiner
Art Unit 3731

August 29, 2007